

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
30 January 2026 _____	
DATE	SIGNATURE

CASE NUMBER: 2024-121331

In the matter between:

SELLO MKHONDO N.O

FIRST APPLICANT

WARREN CASTLE N.O

SECOND APPLICANT

And

BEN NTENTE MASHILO AND THOSE LISTED

FIRST RESPONDENT

IN ANNEXURE 'A' TO THE NOTICE OF MOTION

SHANE NGOBENI AND THOSE LISTED

SECOND RESPONDENT

IN ANNEXURE 'B' TO THE NOTICE OF MOTION

PROMISE RAMASELA LANGA AND THOSE LISTED

THIRD RESPONDENT

IN ANNEXURE 'C' TO THE NOTICE OF MOTION

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

FOURTH RESPONDENT

Heard: 4 November 2025

Delivered: 30 January 2025

Headnote: Eviction – the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act– *lis pendens* – withdrawal of prior proceedings – case management

Summary: An eviction application under Part “B” of PIE served before the urgent court but was struck for lack of urgency. The court exercised case-management powers to determine preliminary issues only. Earlier eviction proceedings under a separate case number had been referred to trial and later withdrawn, at least insofar as they concerned the occupiers cited as third respondents in the present application. Held that *lis pendens* is a dilatory plea requiring pending litigation between the same parties in respect of the same relief. Where the prior proceedings had been withdrawn against the third respondents, no pending litigation existed capable of barring Part “B”. The court declined to pronounce on the status of an interim s 5 eviction order granted against other respondents and not prosecuted on appeal, holding that such issues fell outside the scope of the preliminary enquiry. Preliminary objections dismissed. Matter case-managed and referred for allocation of the main eviction application.

JUDGMENT

WINDELL J:

Introduction

[1] The “B” part of this application in which the applicants seek the eviction of the third respondents from Thembelihle Village, 83 Struben Street, Pretoria (“the property”), served before me in the urgent court on 15 August 2025. Urgency was not established and the matter was accordingly struck from the urgent roll. However, in light of the historical complexity of the dispute, the multiplicity of related proceedings, and the evident need for judicial intervention to ensure orderly progression towards final determination, I issued case management directives and directed that the preliminary issues be dealt with first.

[2] It was undisputed that the property from which the eviction is sought is situated less than one kilometre from the Pretoria High Court. Although the matter was launched in Johannesburg, both courts exercise concurrent jurisdiction. In the interests of access to justice, a constitutional imperative particularly relevant where a large group of vulnerable occupiers is involved, I exercised my inherent powers to mero motu transfer the matter to the Gauteng Division, Pretoria. I further directed that the National and Provincial heads of the Department of Human Settlements, including the Social Housing Regulatory Authority be joined to ensure that all persons with a direct and substantial interest are before court when the section 4 eviction application proceeds to final argument. A date was accordingly arranged for 15 September 2025.

[3] The matter could not proceed on that date for reasons unrelated to the conduct of any of the parties, and was postponed to 4 November 2025, when the preliminary issues were argued before me at Pretoria High Court. Those preliminary issues are the subject of this judgment.

Background

[4] The historical context is important. The application concerns the eviction of three distinct groups of occupiers residing in the property. The property is operated by a company, Yeast City Housing NPC (Yeast City'), as a social housing project. The application is brought by Yeast City's duly appointed business rescue practitioners and is structured in two parts, Part "A" and Part "B", directed at different groups of occupiers and seeking different forms of relief.

[5] Part "A" of the application served before the urgent court and was heard by Adams J on 27 November 2024. On 5 December 2024 the court granted interim relief in terms of section 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act ("PIE") against two distinct groups of occupiers:

(a) The first respondents, being the occupiers listed in annexure "A", were described by Adams J as a group of persons who, according to the applicants, were in unlawful occupation of several units at the property, and whom the applicants believed to be responsible for the rental boycott at the property and for intimidating the applicant's staff and agents.

(b) The second respondents, being the occupiers listed in annexure "B", were described by Adams J as a further group of persons who, according to the applicants, were likewise in unlawful occupation of several units at the property and withholding rental. Adams J recorded that eviction proceedings under section 4 of PIE had already been instituted against this group.

[6] Crucially, the order against the first and second respondents was expressly granted pending the finalization of eviction proceedings under case number **2022-060823**, instituted in terms of section 4 of PIE. The relief was thus temporary and conditional and did not determine the applicants' entitlement to final eviction against the first and second respondents.

[7] In respect of the third respondents, the applicants in Part "A" sought eviction from the units they occupied, coupled with relocation to alternative units within the property, pending the outcome of Part "B", in which a final order of eviction is sought against them. Adams J granted an order against the third respondents on an urgent basis, directing them to relocate from the units they then occupied to designated units within blocks 1, 2, 3 and 4 on the property. The court also ordered the fourth respondent, the City of Tshwane, to conduct occupancy audits and assessments to determine their personal circumstances and eligibility for temporary emergency accommodation. Leave was granted to supplement the founding papers in Part "B", and the costs of the urgent application were expressly reserved for determination in the proceedings dealing with final eviction.

[8] Leave to appeal this order was granted by Adams J on 13 March 2025. The appeal was not prosecuted and has since lapsed.

The occupiers

[9] The distinctions between the occupiers and the relief sought against them in the different stages of the application are material. The respondents before court do not constitute a single class, and the relief sought and granted against each group has

differed at various stages of the litigation. The first and second respondents were the subject of urgent interim eviction relief under section 5 of PIE, granted pending the finalisation of eviction proceedings under a separate case number. By contrast, the third respondents were not evicted on an urgent basis, but were permitted to remain in occupation subject to relocation and assessment by the City of Tshwane. The procedure followed in respect of each group, the factual allegations relied upon, and the interim protections afforded to them have therefore not been identical.

[10] Before me is only Part “B” of the application, which concerns the third respondents. They raised a series of in limine objections, the principal ground being *lis pendens*, premised mainly on the eviction proceedings instituted under case number 2022/060823, as well as objections grounded in procedural fairness. The respondents further invited the court to determine whether the interim order granted under Part “A” remains operative following the grant of leave to appeal, which appeal was never prosecuted. Those contentions must be addressed in the assessment of the preliminary issues.

The status of the litigation under case number 2022/060823.

[11] In January 2023 an earlier eviction application under case number 2022/060823 served before Dlamini J. The dispute at that stage concerned the same property, a substantially overlapping class of occupiers, and final eviction relief was sought in terms of section 4 of PIE. Owing to disputes of fact, Dlamini J referred the matter to trial.

[12] The papers before me indicate that the applicants did not pursue the matter to trial. Instead, after the plea of *lis pendens* was raised by the respondents in these proceedings, the applicants withdrew the proceedings under case number 2022/060823

at least insofar as they concerned the occupiers who are cited as the third respondents in the present application. Whether the withdrawal extended beyond those occupiers to include the first and second respondents is not necessary to determine for present purposes.

[13] What is material is that, at the time the preliminary issues in this matter were argued, the third respondents were no longer parties to the proceedings under case number 2022/060823. The respondents nevertheless rely on the earlier referral to trial in that matter to contend that the present application is barred by *lis pendens*. The validity of that contention must be assessed on the basis of the current status of the litigation as it relates to the third respondents.

The *lis pendens* objection

[14] *Lis pendens* is a dilatory plea. Its purpose is to prevent the duplication of litigation and the possibility of conflicting judgments where there is pending litigation between the same parties, based on the same cause of action, in respect of the same subject matter. The requirements for the successful invocation of the plea are well established: there must be pending litigation; between the same parties; based on the same cause; and in respect of the same relief.¹

[15] Even where these requirements are *prima facie* present, the plea is not absolute. The court retains a discretion whether to stay or dismiss later proceedings, having regard to considerations of fairness, convenience and the interests of justice. The doctrine is

¹ *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others* (741/12) [2013] ZASCA 129 paras [1] to [3]; 2013 (6) SA 499 (SCA); [2013] 4 All SA 509 (SCA).

designed to promote the efficient administration of justice, not to create procedural obstacles that delay the final resolution of disputes.²

[16] In the present matter, the *lis pendens* objection is advanced primarily on the basis of the eviction proceedings instituted under case number 2022/060823. As already explained, those proceedings were withdrawn at least insofar as they concerned the third respondents, who are the only respondents affected by Part “B” of the present application. At the time the preliminary issues were argued, the third respondents were no longer parties to the earlier proceedings.

[17] In these circumstances, one of the essential requirements for *lis pendens* is absent. There is no pending litigation under case number 2022/060823 involving the same parties as those against whom eviction relief is sought in Part “B”. Whatever the position may be in relation to the first and second respondents, that litigation does not concern the third respondents and cannot bar the adjudication of the relief sought against them in these proceedings.

[18] The respondents contend that the earlier referral to trial under case number 2022/060823 is, in itself, sufficient to found the plea. That contention cannot be sustained. *Lis pendens* operates with reference to pending litigation as it exists at the time the plea is determined. A referral to trial in proceedings that have subsequently been withdrawn as against the relevant parties cannot, without more, constitute pending litigation for purposes of the doctrine.

² *Loader v Dursot Bros (Pty) Ltd* 1948 (3) SA 136 (T).

[19] The fact that the withdrawal occurred after the *lis pendens* point was raised does not alter the analysis. The court is required to consider the legal position as it stands when the objection is adjudicated. Once the earlier proceedings were withdrawn in relation to the third respondents, there was no longer any parallel litigation capable of supporting the plea against them.

[20] In any event, even if it were assumed in favour of the respondents that there was sufficient overlap between the proceedings to trigger consideration of *lis pendens*, this would be an appropriate case in which to exercise the court's discretion against upholding the plea. The present application seeks final eviction relief against the third respondents under Part "B", following a complex and protracted procedural history. To stay these proceedings would serve only to prolong uncertainty and delay the determination of issues that must, in any event, be resolved.

[21] This is particularly so in eviction matters under PIE, where courts are enjoined to deal with disputes in a manner that is just, equitable and expeditious, and where prolonged procedural skirmishing may itself have adverse consequences for both property owners and occupiers.

[22] It is in this context that the respondents' further reliance on other proceedings must be considered. In addition to the proceedings under case number 2022/060823, the respondents sought to involve proceedings that served before Potterill J as part of their *lis pendens* argument (Case number 2022-011320).

[23] That reliance is misplaced. The matter before Potterill J did not constitute an eviction application under section 4 of PIE and did not seek, nor result in, final eviction

relief. The order made in that matter was procedural in nature and directed the parties to engage in mediation.

[24] A referral to mediation does not amount to pending litigation for purposes of *lis pendens*. It is not a determination of rights and cannot result in executable relief. The Potterill J proceedings therefore do not involve the same cause of action or the same relief as that sought in Part “B” of the present application and cannot operate as a bar to its adjudication.

[25] For these reasons, the plea of *lis pendens* cannot succeed.

The procedural fairness objection

[26] The respondents also contend that the present proceedings are procedurally unfair and should not be permitted to proceed. This objection is advanced with reference to the overall conduct of the litigation, including the institution and withdrawal of earlier proceedings, the sequencing of applications, and the filing of supplementary affidavits at various stages.

[27] It is correct that the procedural history of this matter is complex and that the litigation has not followed a linear course. Multiple applications have been launched over time, interim relief has been sought and granted, proceedings have been withdrawn in part, and additional affidavits have been filed as the factual landscape has evolved. That history, however, must be assessed in context. It reflects not only the conduct of the applicants, but also the differentiated treatment of distinct groups of occupiers, the involvement of the City of Tshwane, and the need to address urgent risks pending the final determination of eviction.

[28] Procedural fairness in motion proceedings does not require procedural neatness or an absence of complication. It requires that parties be afforded a fair opportunity to know the case they are required to meet and to place their version before court. In the present matter, the third respondents have been afforded that opportunity. They are legally represented, have delivered answering affidavits, and have raised comprehensive preliminary objections, including *lis pendens* and objections relating to the status of earlier proceedings and interim orders.

[29] To the extent that the respondents rely on the withdrawal of the proceedings under case number 2022/060823 as a basis for procedural unfairness, that contention cannot be sustained. The withdrawal did not deprive the third respondents of any accrued procedural entitlement in those proceedings. On the contrary, it resulted in those proceedings no longer being pursued against them. The present application under Part “B” was thereafter instituted, and the respondents have been afforded the full procedural protections attendant upon eviction proceedings under section 4 of PIE.

[30] I have already recorded concerns regarding aspects of the manner in which the litigation has been conducted, including the fragmented filing of affidavits and the late delivery of material. Those concerns are properly addressed through the exercise of case-management powers and the issuing of clear directives going forward. They do not, however, justify the striking down or staying of the present proceedings on grounds of procedural unfairness.

[31] The procedural fairness objection therefore cannot succeed.

The status of the Part “A” order

[32] The interim relief granted under Part “A” by Adams J was expressly framed as temporary relief, granted pending the finalisation of eviction proceedings instituted under a different case number. The order did not purport to determine finally the rights of the parties, nor did it regulate the position of the third respondents by way of final eviction.

[33] The respondents contend that, because the eviction proceedings to which the Part “A” order was tethered have since been withdrawn, this court is now required to determine whether the interim order remains operative. That submission cannot be accepted.

[34] The withdrawal of the earlier proceedings may well have implications for the continued operation or practical effect of the interim order granted under Part “A”. However, that question does not arise for determination in the present proceedings. Before me is only Part “B” of the application, which concerns the third respondents, and I am seized solely with the determination of preliminary issues and the exercise of case-management powers. It would therefore be neither necessary nor appropriate to pronounce on the status or consequences of the Part “A” order in this judgment.

[35] Any dispute regarding the effect of the withdrawal of the earlier proceedings on the interim relief granted under Part “A” must be addressed, if at all, in proceedings directly concerned with the enforcement or variation of that order, or by the court seized with the determination of the substantive eviction relief.

Conclusion on the preliminary issues

[36] The preliminary objections raised by the respondents, including the plea of *lis pendens* and the objections grounded in procedural fairness, have not been sustained.

The withdrawal of the proceedings under case number 2022/060823 insofar as they concerned the third respondents means that there is no pending litigation capable of barring the adjudication of Part “B” of the present application. Nor has procedural unfairness been established.

[37] It bears emphasising that this judgment is confined to the determination of preliminary issues and the exercise of case-management powers. I express no view on the merits of the eviction application under Part “B”, which will fall to be determined by another court on a full consideration of the evidence and the just and equitable enquiry mandated by PIE.

[38] It is now necessary to issue directions to ensure that the matter is properly case-managed and made ready for the hearing of the main eviction application.

Case management directions

[39] In order to ensure that the Part “B” eviction application proceeds in an orderly, efficient and procedurally fair manner, and to avoid further interlocutory skirmishes, the following case management directions are issued:

[40] The applicants are directed, within 15 days of this judgment, to file an updated consolidated index and record comprising all affidavits, annexures and court orders filed to date that are relevant to Part “B” of the application.

[41] The applicants are further directed, within the same period, to file a schedule identifying the third respondents, indicating for each:

- (a) the unit presently occupied;

- (b) whether relocation has occurred pursuant to the interim order;
- (c) the status of any assessment conducted by the City of Tshwane;
- (d) and whether the household has been identified as qualifying for temporary emergency accommodation.

[42] The City of Tshwane is directed, within 30 days of this judgment, to file an updated affidavit confirming:

- (a) the steps taken to comply with the order of Adams J;
- (b) the current status of occupancy audits and assessments relating to the third respondents;
- (c) the availability, nature and location of any temporary emergency accommodation identified; and
- (d) any further steps required to place the matter in a position where the court seized with Part “B” can conduct the just and equitable enquiry required by section 4 of PIE.

[43] No further affidavits may be filed by any party without the prior leave of the court. Any application for leave must be brought on notice and must provide a full explanation for the necessity of the further affidavit and the reasons why the material could not have been placed before court earlier.

[44] In transferring the matter to the Gauteng Division, Pretoria, I directed that the National and Provincial Heads of the Department of Human Settlements, as well as the

Social Housing Regulatory Authority, be joined as parties to the proceedings. That direction was issued to ensure that all organs of state and entities with a direct and substantial interest in the relief sought are before court when the section 4 eviction application is finally adjudicated.

[45] It is apparent that, to date, those parties have not been formally joined. Compliance with the joinder direction is not optional. Their participation is integral to the court's ability to conduct the just and equitable enquiry required by PIE, particularly in relation to housing obligations, regulatory oversight and the availability of alternative accommodation.

[46] The applicants are accordingly directed to effect joinder of the National and Provincial Heads of the Department of Human Settlements and the Social Housing Regulatory Authority within 20 days of this judgment, and to file proof of service and amended papers reflecting such joinder.

[47] No further steps may be taken to enrol Part "B" of the application for hearing unless and until such joinder has been effected. Any failure to comply with this direction may result in the postponement of the matter, an adverse costs order, or such further case-management measures as the court hearing the eviction application may deem appropriate.

[48] Once the above steps have been completed, the parties are directed to jointly approach the Acting Deputy Judge President, Davis J, for the allocation of a hearing date for the determination of Part "B" of the application. The Registrar is directed to render all necessary assistance in that regard.

Costs

[49] Although the preliminary objections raised by the respondents have not succeeded, the litigation history reflects a fragmented and procedurally complex path, to which more than one party has contributed. In the exercise of my discretion, and mindful that this judgment is concerned only with preliminary issues and case management, I consider it appropriate that each party bears its own costs in respect of the in limine proceedings.

[44] In the result the following order is made:

1. The preliminary objections raised by the respondents, including the plea of *lis pendens* and objections based on procedural fairness, are dismissed.
2. The matter is case-managed in accordance with the directions set out in paragraphs [40] to [48] above.
3. Each party is to bear its own costs in respect of the preliminary issues.
4. The Registrar is directed to place the matter before the Acting Deputy Judge President, Davis J, for the allocation of a hearing date for the determination of Part “B” of the application.



L WINDELL

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand down is deemed to be 30 January 2026.

Appearances

For the applicants:	A Laher
Instructed by:	VMW Inc.
For the first to third respondents:	T Pillay
Instructed by:	Pillay Thesigan Inc
	M Kufa
	M Tshivhase
Instructed by:	Mabaso C.L Attorneys
For the fourth respondent:	O Peter
Instructed by:	Majang Attorneys
Date of Hearing:	4 November 2025
Date of Judgment:	30 January 2026